

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-2031

**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

**Docket No. 76-2031**

NICHOLAS RATTENNI,  
*Petitioner-Appellant,*  
—v.—

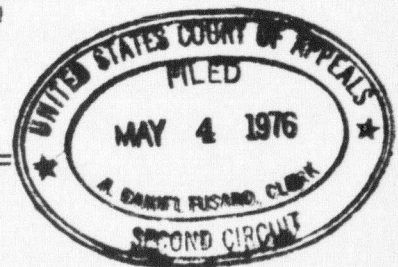
GEORGE C. WILKINSON, Warden, FCI, Danbury, Con-  
necticut, ATTORNEY GENERAL OF THE U.S.,  
U.S. BOARD OF PAROLE, BUREAU OF PRISONS,  
and DEPARTMENT OF JUSTICE OF THE U.S.,  
*Respondents-Appellees.*

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF CONNECTICUT

**APPENDIX FOR PETITIONER-APPELLANT**

GINO E. GALLINA, ESQ.,  
*Attorney for Petitioner-Appellant,*  
30 Broad Street,  
New York, New York 10004,  
(212) 944-1550.

JOEL A. BRENNER,  
*Of Counsel.*



PAGINATION AS IN ORIGINAL COPY



INDEX TO APPENDIX

	page
Petition for writ of habeas corpus . . . . .	A-1
Affidavit of Gino Gallina . . . . .	A-5
Affidavit of Gino Gallina . . . . .	A-10
Order to file answer . . . . .	A-21
Respondent's answer . . . . .	A-23
Petitioner's reply and supplemental affidavit . . . . .	A-27
Respondent's supplemental answer . . . . .	A-36
Petitioner's supplemental affidavit . . . . .	A-39
Petitioner's supplemental affidavit . . . . .	A-53
Petitioner's supplemental affidavit . . . . .	A-59
Transcript of September 30, 1975 . . . . .	A-65
Memorandum of decision dismissing petition for writ of habeas corpus, Newman, U.S.D.J. (3/2/76) . . .	A-75
Judgment . . . . . -	A-85
Petitioner's notice of appeal . . . . .	A-87

A 1

PETITION FOR WRIT OF HABEAS CORPUS



PETITION FOR WRIT OF HABEAS CORPUS  
UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

PERSONS IN FEDERAL CUSTODY

Nicholas Rattenni, Reg. No. 78506-158	)	
Full name and prison number	)	
(if any) of petitioner	)	Civil Action No. _____
v.	)	(To be supplied by the
Attorney General of the U.S., U.S.	)	Clerk of the District Court)
Board of Parole, Bureau of Prisons,	)	
Department of Justice of the U.S.,	)	George C. Wilkinson, Warden, Federal
Name of respondent	)	Correctional Institution, Danbury, Connecticut,
		Respondents.

INSTRUCTIONS - READ CAREFULLY

In order for this petition to receive consideration by the District Court, it shall be in writing (legibly handwritten or type-written), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

If the petition is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fees and costs of the habeas corpus proceedings. When the petition is completed, the original and two copies shall be mailed to the Clerk of the District Court for the District of Connecticut.



1. Place of detention Federal Correctional Institution, Danbury, Connecticut
2. Name and location of court which imposed sentence United States District Court for the Southern District of New York
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) Ind. No. 71 Cr. 398 - I/S Gambling
  - (b) Ind. No. 72 Cr. 647 - Consp. to Influence Jurors
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 27, 1972: 3 years imprisonment, fine of \$30,000
  - (b) October 9, 1973: 5 years imprisonment, fine of \$10,000
  - (c) \_\_\_\_\_
5. Check whether a finding of guilty was made
  - (a) after a plea of guilty Ind. No. 72 Cr. 647
  - (b) after a plea of not guilty Ind. No. 71 Cr. 398
  - (c) after a plea of nolo contendere
6. If you were found guilty after a plea of not guilty, check whether that finding was made by
  - (a) a jury Ind. No. 71 Cr. 398
  - (b) a judge without a jury \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?
 

Yes (Ind. No. 71 Cr. 398)
8. If you answered "yes" to (7), list
  - (a) the name of each court to which you appealed:
    - i. U.S. Court of Appeals for the Second Circuit
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such court to which appealed:
    - i. Affirmed
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_



(c) the date of each such result:

- i. Unknown
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(d) if known, citations of any written opinions or orders entered pursuant to such results:

- i. Unknown
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See annexed affidavits of Gino E. Gallina, Esq. (pp. 3-A et seq.)

(b)

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See annexed affidavits of Gino E. Gallina, Esq. (pp. 3-A et seq.)

(b)

(c)



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x

NICHOLAS RATTENNI, Reg. No. 78506-158,

Petitioner,

-v-

ATTORNEY GENERAL OF THE UNITED  
STATES, U.S. BOARD OF PAROLE, BUREAU  
OF PRISONS, DEPARTMENT OF JUSTICE OF  
THE UNITED STATES, GEORGE C. WILKINSON,  
WARDEN, FEDERAL CORRECTIONAL INSTITU-  
TION, DANBURY, CONNECTICUT,

AFFIDAVIT

Respondents.

-----x

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says: that I am a member of the firm of Lenefsky Gallina Mass & Hoffman, attorneys for the petitioner Nicholas Rattenni, and I make this affidavit in support of the petitioner's motion to have the designation, Special Offender, Organized Crime, removed from his prison file.

1. That your deponent has personal knowledge obtained both from petitioner's caseworker, prison officials, and revelations during a parole hearing that the petitioner, who is presently incarcerated at the Federal Correctional Institution at Danbury, Connecticut, has been designated as a Special Offender, Organized Crime.

2. That the petitioner's classification as a Special Offender, Organized Crime was made in an arbitrary, capricious and unreasonable manner, not



consistent with due process, which must necessarily be observed in such cases. That a prisoner upon being so designated suffers a significant loss of rights with regard to such matters as social furloughs, work release, transfers to community treatment centers, educational and rehabilitation opportunities, and the opportunity for early parole.

3. That it is clear that by designating the petitioner as a Special Offender, Organized Crime, he will be deprived of substantial benefits and suffer a loss of advantages which would be freely given to a prisoner not so classified. This classification, which often results in a denial of furloughs, the refusal of transfers to community treatment centers and invariably prevents the opportunity for early parole, cannot and should not be made by the purely arbitrary actions of prison officials. Where the State or Federal government has created certain rights and acknowledged that their deprivation was the result of a special classification, the petitioner's (prisoner's) interest therein is sufficiently embraced within the Fourteenth Amendment to entitle him to procedures that insure that these rights were not arbitrarily abrogated. Wolff v. McDonnell, 94 S.Ct. 2963 (1974); Newkirk v. Butler, 499 F.2d 1214 (C.A.2, 1974). The failure to accord a prisoner a right to be free from an undeserving classification, should receive court sanctions similar to those rebuking the arbitrary punitive actions taken by prison authorities. U.S. ex rel. Haymes v. Montanye, Docket No. 74-1208 (C.A.2, decided October 4, 1974). So too, basing a decision upon erroneous information which is legitimately subject to question or refutation is as equally reprehensible as rendering no decision at all. U.S. ex rel. Johnson v. Chairman of the New York State Board of Parole, 500 F.2d 925 (C.A.2, 1974), vacated as moot sub. nom.



Regan v. Johnson, 419 U.S. 1015 (1975).

4. That it is fundamental to the precepts that we hold so dear to our polity that substantial rights should not suffer deprivation without sound reasons accurately based and made known to all so that any errors may be quickly rectified. Morrissey v. Brewer, 92 S.Ct. 2593 (1972); Gagnon v. Scarpelli, 93 S.Ct. 1756 (1973).

5. That there can be no doubt that such a designation results in a grievous loss to the prisoner. Morrissey v. Brewer, supra; Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011 (1970); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) (Frankfurter, J., concurring). To allow the petitioner to fall victim to such a classification without even the basic elements of rudimentary due process is surely violative of his constitutional rights. Craft v. The Attorney General, Civil No. 74-430 (M.D.D.C. Pa., August 15, 1974); Catalano, et al. v. United States of America and John J. Norton, Warden, 383 F.Supp. 346 (D.C. Conn. 1974). The learned opinion in the Catalano case, citing liberally from Masiello v. Norton, 364 F.Supp. 1133 (D.C. Conn. 1973) reviewed at length the arbitrary methods of achieving this classification, the attendant harms upon the prisoners so classified, and the necessity for insuring that future classifications would not be the product of unreasonable actions. The holding in Catalano has been affirmed by the Second Circuit Court of Appeals in Cardaropoli, et al. v. Norton, Slip Op. Nos. 29-35, Docket Nos. 75-2005, 2015, 7023/6, 2033 (September 29, 1975).

6. That the petitioner should be granted a hearing before an impartial hearing officer, who could determine from the government's evidence whether or not justification exists for the classification and at which time the petitioner



and/or his counsel could cross-examine any witness or question any document presented by the government, and at which time the petitioner would be able to call his own witnesses to refute the allegations of the government. The opportunity to be heard is a fundamental requisite of due process of law and the hearing must be at a meaningful time and in a meaningful manner.

(Goddberg v. Kelly, supra, at pp. 267-268, S.Ct. p. 1020, citing Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779 (1914); Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965). This aspect of the relief requested is particularly crucial when one considers the grave health situation of the petitioner (see attached medical reports).

7. That in addition to the potential losses listed earlier by the petitioner, the petitioner alleges by separate affidavit of his attorney that his denial of parole was specifically based on his being labeled a Special Offender, Organized Crime.

8. Further, petitioner asks the Court to note the arbitrary manner in which the defendant is being treated by the Bureau of Prisons and the Parole Board. By the guidelines published by the Parole Board (see attached exhibit) the defendant in light of the charge for which he was sentenced and for his performance while incarcerated, should have already been released. But without question, the placing of the petitioner in this Special Offender, Organized Crime category has caused his continued incarceration and the guidelines have been abandoned so far as the petitioner is concerned. Further, despite the availability of adequate correctional facilities in the East, along with adequate medical facilities, the petitioner was transferred to Springfield,



Missouri so that he would be unable to receive visits from his family and would be virtually in complete isolation from his wife, his children, and other relatives. The petitioner's transfer back to Danbury was accomplished only after long and extensive battles in which the petitioner found it necessary to retain counsel in an effort to be able to see his family.

WHEREFORE, the petitioner moves this Court for a writ of habeas corpus pursuant to Title 28, U.S.C. §§ 2241 et seq. and for an order directing the appropriate prison-parole authorities to remove the Special Offender, Organized Crime designation from the petitioner, or in the alternative, to hold a hearing in accordance with procedural due process as set forth in the petitioner's motion papers, and to grant the petitioner a new parole hearing. Further, the petitioner asks the Court to grant him bail during the pendency of this motion in that the petitioner has adequately demonstrated his clear prospect of success and the conduct of the prison-parole authorities being so outrageous that the petitioner should not now be made to suffer more.

---

GINO E. GALLINA

Sworn to before me this

16th day of October, 1975.



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x  
NICHOLAS RATTENNI, Reg. No. 78506-158,

Petitioner,

-v-

AFFIDAVIT

ATTORNEY GENERAL OF THE UNITED  
STATES, U.S. BOARD OF PAROLE, BUREAU  
OF PRISONS, DEPARTMENT OF JUSTICE OF  
THE UNITED STATES, GEORGE C. WILKINSON,  
WARDEN, FEDERAL CORRECTIONAL INSTITU-  
TION, DANBURY, CONNECTICUT,

Respondents.

-----x  
STATE OF NEW YORK )  
                                  ss. :  
COUNTY OF NEW YORK)

GINO E. GALLINA, being duly sworn, deposes and says:

That I am an attorney at law and was present during the parole  
hearing held on behalf of Nicholas Rattenni.

The Parole Board listened to a reading of facts and information  
from confidential reports taken from Mr. Rattenni's file.

That during the entire course of the parole hearing, the petitioner  
was queried from alleged confidential reports which were part of his prison  
and parole files. The statements and questions asked from these reports  
concerned themselves with erroneous, untruthful and unfactual allegations of  
the defendant's association with organized crime figures reaching back from  
the present all the way to the 1930's. They further stated that this information  
and these reports were the basis for his having been designated Special

Offender, Organized Crime. In addition to other illegal and erroneous and ridiculous information, notorious associations with names such as Vito Genovese, Lucky Luciano, Albert Anastasia and others were alleged. Considering that the petitioner had not even been arrested for this 40 year span, and the ludicrousness of the questions encompassing that period, the atmosphere would indeed be considered comic were not the results so tragic for the petitioner.

The petitioner asked for an opportunity to examine the reports so that he could determine the basis of such erroneous information in an attempt to refute it, but was denied such permission. The petitioner, however, did deny to the Board the accuracy of such information.

The Parole Board appeared to be primarily interested in this Special Offender information concerning the petitioner, rather than the nature of the petitioner's performance and rehabilitation in prison.

---

GINO E. GALLINA

Sworn to before me this

16th day of October, 1975.



CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION 8-1-74	DATE OF DISCHARGE 8-14-74	NUMBER OF DAYS HOSPITALIZED 13	

(Sign and date at end of narrative)

This 67-year-old white man was received in transfer from Danbury, Connecticut on July 30th. On the plane flight down he became very weak and clammy and thinks that he may have passed out briefly in R&D. He gave a history of having black tarry stools, twice in the past two weeks, and had been brought on Friday, July 26th to the hospital at Danbury with a story that he had vomited what appeared to be blood. He was evidently not considered to have after he reached the hospital. On July 31st GI bleeding was suspected but no blood or stool was obtained on rectal examination. He was admitted to the hospital on August 1st where his hemoglobin was 4.1 grams with a hematocrit of 13. Daily stools were positive for occult blood but negative for gross blood.

Physical examination aside from pallor and claminess was not remarkable. He was given two units of blood on the first hospital day and one unit on the second hospital day after which he felt much better and looked better. Upper GI series revealed a large mass in the left upper quadrant involving the fundus of the stomach on the greater curvature. A similar finding in May at Danbury and also at the Yonkers Professional Hospital where he was a patient from May 21st to June 21st. At Yonkers he also had esophagogastrosocopy on June 10th. Biopsies from several sites at gastrosocopy revealed only normal mucosa. Because of the negative biopsies and the absence of any significant symptoms it was considered no further work-ups should be done at that time. It is worthy to note that in the past Mr. Rattenni had undergone coronary cineangiography at St. Joseph's Hospital in Patterson, New Jersey which showed diffuse coronary atherosclerosis of the right coronary artery and the anterior descending as well as the circumflex. In July of 1973 he was in the Yonkers Hospital and had a squamous papilloma removed from his right vocal cord. He had also been under treatment for angina and hypertension at Danbury from the time of his arrival. It is also note worthy that at Danbury on April 15th, 1974 he had a hemoglobin of 14.1 grams; hematocrit of 42. The patient was supposed to be a diabetic but on April 16th, 1974 sugar tolerance test showed fasting= 100 milligrams, one-half hour later 136, one hour 89.5, two hours 86, three hours 82.5 with negative urines for glucose.

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN /s/ Thornton Scott, M. D.	DATE 8-15-74	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give Name—last, first, middle; grade, date; hospital or medical facility)		REGISTER NO. 78506-158	WARD NO.

RATTENNI, Nicholas  
Federal Correctional Institution  
Lexington, Kentucky 40507

NARRATIVE SUMMARY  
Standard Form 502  
502-103 04

BEST COPY AVAILABLE



Rev. August 1954  
By Bureau of the Budget  
Circular A-32

CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED	
8-1-74	8-14-74	13	

(Sign and date at end of narrative)

It does not appear from this that the previous diagnosis of diabetes was tenable. Results of liver and spleen scans at the Good Samaritan Hospital were not available as of this date.

DIAGNOSES: (1) Gastrointestinal hemorrhage, undetermined source.  
(2) Arteriosclerotic heart disease from history  
(3) Diverticulitis of the colon  
(4) Hiatus Hernia

TS:jm

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
/s/ Thornton Scott, M. D.	8-15-74		
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.
		78506-158	

RATTENNI, Nicholas  
Federal Correctional Institution  
Lexington, Kentucky 40507

NARRATIVE SUMMARY  
Standard Form 502  
502-103-04



# FROM LAW LIBRARY

Form 8-3  
(Rev. 4/74)

## ADULT

Guidelines for Decision-Making  
Average Total Time Served Before Release  
(Including Jail Time)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Programs (Salient Factor Score)			
	Very Good (11-1)	Good (8-6)	Fair (5-4)	Poor (3-0)
<b>LOW</b> Immigration Law Violations Minor Traffic (includes license and simple possession of stolen property less than \$1,000) Bulldozing	6-10 months	8-12 months	10-14 months	12-16 months
<b>LOW-MODERATE</b> Alcohol Law Violations Counterfeit Currency (Passing/Possession less than \$1,000) Drugs: Marijuana, Possession (less than \$100) Firearms Act, Possession/Purchase/Sale single weapons not altered or machine gun Forgery/Fraud (less than \$1,000) Income Tax Evasion (less than \$1,000) Selective Service Act Violations Theft From Mail (less than \$1,000)	8-12 months	12-16 months	16-20 months	20-25 months
<b>MODERATE</b> Bribery of Public Officials Counterfeit Currency (Passing/Possession \$1,000 - \$19,999) Drugs: "Hard Drugs", Possession by drug user (less than \$500) Marijuana, Possession (\$500 or more) Marijuana, Sale (less than \$1,000) "Soft Drugs", Possession (less than \$5,000) "Soft Drugs", Sale (less than \$500) Explosives (less than \$20,000) Explosives, Possession/Transportation Firearms Act, Possession/Purchase/Sale altered weapons, machine guns, or multiple weapons Income Tax Evasion (\$1,000 - \$19,999) Interstate Transportation of Stolen/Forged Securities (less than \$21,000) Raising Threatening Communications Misprision of Felony Receiving Stolen Property While Exempt from Recall (less than \$20,000) Smuggling of Aliens Theft, Forgery/Fraud (\$1,000 - \$19,999) Theft of Motor Vehicle (not mobile) Theft of Car Rental	12-16 months	16-20 months	20-24 months	24-30 months
<b>HIGH</b> Burglary or Larceny (Other than Embezzlement) First Band or Post Office Counterfeit Currency (Passing/Possession \$20,000 or more) Counterfeiting (Manufacturing) Drugs: "Hard Drugs", Possession by drug user (dependent user \$500 or more) "Hard Drugs", Sale (dependent user \$500 or more) Marijuana, Sale (\$5,000 or more) "Soft Drugs", Possession (\$5,000 or more) "Soft Drugs", Sale (\$500 - \$5,000) Explosives (\$20,000 - \$100,000) Interstate Transportation of Stolen/Forged Securities (\$20,000 - \$100,000) Ransom Act (no force - Commercial Purpose) Organized Vehicle Theft Receiving Stolen Property (\$20,000 - \$100,000) Robbery (no weapons or injury) Theft, Forgery/Fraud (\$20,000 - \$100,000)	16-20 months	20-26 months	26-32 months	32-38 months
<b>VERY HIGH</b> Burglary (Weapons) Drugs: "Hard Drugs", Possession by drug user (dependent user \$500 or more) "Hard Drugs", Sale (dependent user \$500 or more) "Hard Drugs", Sale (no prior conviction for sale of "Hard Drugs") "Soft Drugs", Sale (more than \$5,000) Extortion Ransom Act (force) Sexual Act (force)	26-36 months	36-45 months	45-55 months	55-65 months
<b>CAPITAL</b> Aggravated Felony (e.g., Murder, Sexual Act, Assault, Weapon Firm or Carbine) Injury Aircraft Hijacking Drugs: "Hard Drugs", Sale for profit (prior conviction for sale of "Hard Drugs") Explosives (Detonation) Kidnapping Willful Homicide	(Greater than above - however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category)			

- NOTES: 1) If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
- 2) If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
- 3) If an offense behavior involved multiple separate offenses, the severity level may be increased.
- 4) If a continuance is to be given, allow 12 days (1 month) for release program purposes.
- 5) These guidelines are predicated upon good institutional conduct and program performance.
- 6) "Hard Drugs" include heroin, cocaine, marijuana or opiate derivatives, and synthetic opiate substitutes.

BEST COPY AVAILABLE



Form 9  
(Rev. 4/74)

**NARA**  
Guidelines for Decision-Making  
Average Total Time Served Before Release  
(Including Jail Time)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (examples)	OFFENDER CHARACTERISTICS: Parole Proposals (Salient Factor Score)			
	Very Good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
<b>LOW</b> Immigration Law Violations Minor Theft (includes larceny and simple possession of stolen property less than \$1,000) Walkaway				
<b>LOW MODERATE</b> Alcohol Law Violations Counterfeit Currency (Passing/Possession less than \$1,000) Drugs: Marijuana, Possession (less than \$500) Firearms Act, Possession/Purchase/Sale single weapon not altered or machine gun Forgery/Fraud (less than \$1,000) Income Tax Evasion (less than \$1,000) Selective Service Act Violations Theft From Mail (less than \$1,000)	6-12 months		12-18 months	
<b>Moderate</b> Attorney of Public Officials Counterfeit Currency (Passing/Possession \$1,000 - \$15,999) Drugs: "Hard Drugs", Possession by drug user (less than \$500) Marijuana, Possession (\$500 or more) Marijuana, Sale (less than \$5,000) "Soft Drugs", Possession (less than \$5,000) "Soft Drugs", Sale (less than \$500) Possession (less than \$20,000) Explosives, Possession/Transportation Firearms Act, Possession/Purchase/Sale altered weapon(s), machine gun(s), or multiple weapons Income Tax Evasion (\$1,000 - \$50,000) Interstate Transportation of Stolen/Forged Securities (less than \$20,000) Raising Threatening Communications Disruption of Felony Receiving Stolen Property With Intent to Resell (less than \$20,000) Smuggler of Aliens Theft, Forgery/Fraud (\$1,000 - \$15,999) Theft of Motor Vehicle (See Multiple Thefts or for Resale)	12-18 months		18-24 months	
<b>High</b> Burglary or Larceny (Other than Embezzlement) From Bank or Post Office Counterfeit Currency (Passing/Possession \$20,000 or more) Counterfeiting (Manufacturing) Drugs: "Hard Drugs", Possession by drug dependent user (\$500 or more) "Hard Drugs", Sale to Support Own Habit Marijuana, Sale (\$5,000 or more) "Soft Drugs", Possession (\$5,000 or more) "Soft Drugs", Sale (\$100 - \$5,000) Embezzlement (\$20,000 - \$100,000) Interstate Transportation of Stolen/Forged Securities (\$20,000 - \$100,000) RICO Act (See Force - Commercial Purposes) Organized Vehicle Theft Receiving Stolen Property (\$20,000 - \$100,000) Robbery (No Weapon or Injury) Theft, Forgery/Fraud (\$20,000 - \$100,000)				
<b>Very High</b> Murder (Weapon) Drugs: "Hard Drugs", Possession by non drug dependent user (\$500 or more) or by nonuser (any quantity) "Hard Drugs", Sale for Profit (No Prior conviction for Sale of "Hard Drugs") "Soft Drugs", Sale (more than \$1,000) Extortion RICO Act (Force) Sexual Act (Force)	20-26 months		26-32 months	
<b>Extremely High</b> Aggravated Felony (e.g., Robbery, Sexual Act, Assault-Weapon Faced or Serious Injury) Airports Hijacking Drugs: "Hard Drugs", Sale for Profit (Prior conviction for Sale of "Hard Drugs") Explosives Explosives (Detonation) Kidnapping Willful Homicide	(Greater than above - However, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category)			

- NOTES:**
- 1) If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
  - 2) If an offense behavior can be classified under more than one category, the least serious applicable category is to be used.
  - 3) If an offense behavior involved multiple separate offenses, the severity level will be increased.
  - 4) If a continuance is to be given, allow 12 days (1 month) for release program preparation.
  - 5) These guidelines are predicated upon good institutional conduct and program performance.
  - 6) "Hard Drugs" include heroin, cocaine, morphine or opiate derivatives, and synthetic opiate substitutes.



Form B-1  
Rev. 4/74

# **YOUTH** Guidelines for Probation/Parole Average Total Time Served Before Release (Including Jail Time)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENSE CHARACTERISTICS: Parole Progress (Salient Factor Score)			
	Very Good (11-13)	Good (8-10)	Fair (5-7)	Poor (3-4)
<b>LOW</b> Immigration Law Violations Minor Theft (includes larceny and simple possession of stolen property less than \$1,000) Waltzney	6-10 months	8-12 months	10-14 months	12-16 months
<b>LOW MODERATE</b> Alcohol Law Violations Counterfeit Currency (Passing/Possession less than \$1,000) Drugs: Marijuana, Possession (less than \$700) Firearms Act, Possession/Purchase/Sale single weapon not altered or machine gun Forgery/Fraud (less than \$1,000) Income Tax Evasion (less than \$1,000) Selective Service Act Violations Theft from Mail (less than \$1,000)	8-12 months	12-16 months	16-20 months	20-25 months
<b>MODERATE</b> Bribery of Public Officials Counterfeit Currency (Passing/Possession \$1,000 - \$15,000) Drugs: "Hard Drugs", Possession by drug user (less than \$500) Marijuana, Possession (\$500 or more) Marijuana, Sale (less than \$5,000) "Soft Drugs", Possession (less than \$5,000) "Soft Drugs", Sale (less than \$100) Embezzlement (less than \$10,000) Explosives, Possession/Transportation Firearms Act, Possession/Purchase/Sale altered weapon(s), machine gun(s), or multiple weapons Income Tax Evasion (\$1,000 - \$50,000) Interstate Transportation of Stolen/Forged Securities (less than \$10,000) Mailing Threatening Communications Misprision of Felony Receiving Stolen Property With Intent to Resell (less than \$10,000) Smuggling of Aliens Theft, Forgery/Fraud (\$1,000 - \$15,000) Theft of Motor Vehicle (More Multiple Theft or for Resale)	9-13 months	13-17 months	17-21 months	21-26 months
<b>HIGH</b> Burglary or Larceny (Other than Embezzlement) from Bank or Post Office Counterfeit Currency (Passing/Possession \$10,000 or more) Counterfeiting (Manufacturing) Drugs: "Hard Drugs", Possession by drug dependent user (\$500 or more) "Hard Drugs", Sale to Support Own Habit Marijuana, Sale (\$5,000 or more) "Soft Drugs", Possession (\$5,000 or more) "Soft Drugs", Sale (\$500 - \$5,000) Embezzlement (\$10,000 - \$100,000) Interstate Transportation of Stolen/Forged Securities (\$10,000 - \$100,000) RICO Act (No Force - Commercial Purposes) Organized Vehicle Theft Receiving Stolen Property (\$10,000 - \$100,000) Robbery (No Weapon or Injury) Theft, Forgery/Fraud (\$10,000 - \$100,000)	12-16 months	16-20 months	20-24 months	24-28 months
<b>VERY HIGH</b> Burglary (Weapon) Drugs: "Hard Drugs", Possession by non drug dependent user (\$500 or more) or by non-user (any quantity) "Hard Drugs", Sale for Profit (No Prior conviction for Sale of "Hard Drugs") "Soft Drugs", Sale (more than \$5,000) Extortion RICO Act (Force) Sexual Act (Force)	20-27 months	27-32 months	32-36 months	36-42 months
<b>CRIMINAL</b> Aggravated Felony (e.g., Robbery, Sexual Act, Assault with Weapon Fired or Serious Injury) Aircraft Hijacking Drugs: "Hard Drugs", Sale for Profit (No Prior conviction for Sale of "Hard Drugs") Explosives (Detonation) Kidnapping Willful Homicide	(Greater than above - however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category)			

- NOTES: 1) If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offenses listed.
- 2) If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
- 3) If an offense behavior involves multiple separate offenses, the severity level may be increased.
- 4) If a conviction is to be given, allow 10 days (1 month for release program provision).
- 5) These guidelines are predicated upon good institutional conduct and program performance.
- 6) "Hard Drugs" include heroin, cocaine, marijuana or opiate derivatives, and synthetic opiate substitutes.



11. Have you filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

Yes

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof:

- i. Habeas Corpus pursuant to Title 28 U.S. C. §§ 2241 et seq.
- ii. Habeas Corpus pursuant to Title 28 U.S. C. §§ 2241 et seq.
- iii. \_\_\_\_\_

(b) the name and location of the court in which each was filed:

- i. U.S. District Court for the Western District of Missouri at Springfield
- ii. Same as "i"
- iii. \_\_\_\_\_

(c) the disposition thereof:

- i. Denied with leave for petitioner to pursue his administrative remedies
- ii. Withdrawn upon petitioner's transfer to Danbury
- iii. \_\_\_\_\_

(d) the date of each such disposition:

- i. January 3, 1975
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Civil Action No. 74 CV 690-S-WHB (1/3/75) U.S. Magistrate Dennis J. Stewart
- ii. Civil Action No. 75 CV 189-WHB-R
- iii. \_\_\_\_\_

13. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

(a) Habeas corpus is the only swift and effective remedy to rectify the continued illegal detention of the petitioner and denial of fundamental due process by the prison authorities. Petitioner is not attacking the propriety of his sentence, nor that the judgment could be subject to collateral attack.



(b)

(c)

14. Has any ground set forth in (9) been previously presented to this or any other federal court by way of petition for habeas corpus, motion under Section 2255 of Title 28, United States Code, or any other petition, motion or application?

Yes \_\_\_\_\_

15. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

1. Identical grounds - denied because of failure to exhaust administrative remedies.
- ii. Identical grounds - withdrawn upon petitioner's transfer to Danbury.
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

1. Civil Action No. 74 CV 690-S-WHB (Western District of Missouri)
- ii. Civil Action No. 75 CV 189-WHB-R (Western District of Missouri)
- iii. \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? Yes \_\_\_\_\_

(b) your trial, if any? Yes \_\_\_\_\_

(c) your sentencing? Yes \_\_\_\_\_

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes \_\_\_\_\_



17. If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you:

- i. Saxe, Bacon, Bolan & Manley  
39 East 68th Street, New York, New York 10021
- ii. Lenefsky Gallina Mass & Hoffman  
30 Broad Street, New York, New York 10004
- iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

- i. Lenefsky Gallina Mass & Hoffman at habeas corpus proceedings
- ii. Saxe, Bacon, Bolan & Manley at all other proceedings.
- iii. \_\_\_\_\_

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, Page 1 of this form)?

\_\_\_\_\_  
Signature of Petitioner  
NICHOLAS RATTENNI

)  
) SS  
)

NICHOLAS RATTENNI, being first sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information therein is true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Signature of Affiant  
NICHOLAS RATTENNI

SUBSCRIBED AND SWORN to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_  
(month) (year)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
(month, day, year)



(See instructions, Page 1 of this form)

FORMA PAUPERIS AFFIDAVIT

I, \_\_\_\_\_, do hereby swear that because of my poverty I am unable to pay the costs of said suit or action; that I am unable to give security for the same, and that I believe I am entitled to the redress I seek in said suit or action.

\_\_\_\_\_  
Signature of Petitioner

)  
) SS  
)

\_\_\_\_\_, being first sworn under oath presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Signature of Affiant

SUBSCRIBED and SWORN to before  
me this \_\_\_\_\_ day of \_\_\_\_\_,  
(month)

\_\_\_\_\_  
(year)

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_  
(month, day, year)



A 21

ORDER TO FILE ANSWER



FILED  
NOV 18 4 43 PM '75  
U.S. DISTRICT COURT  
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI :  
V. : CIVIL NO. B-75-321  
GEORGE C. WILKINSON, WARDEN, :  
FEDERAL CORRECTIONAL :  
INSTITUTION, DANBURY, ET AL :

ORDER TO FILE ANSWER

Upon the verified petition of Nicholas Rattenni,  
it is

ORDERED that the respondents file an answer on or  
before December 3, 1975, setting forth the procedure by which  
petitioner was classified a Special Offender and argument why  
that procedure was adequate in light of Cardaropoli et al v.  
Norton, Docket Nos. 75-2005, 75-2015, 75-7023/6, 75-2033 (2d  
Cir. Sept. 29, 1975), and it is further

ORDERED that service by the United States Marshal  
of this order, together with a copy of the verified petition,  
on the United States Attorney for the District of Connecticut  
on or before November 21, 1975, be deemed sufficient service.

Dated at New Haven, Connecticut, this 18th day of  
November, 1975.

Jon O. Newman  
Jon O. Newman  
United States District Judge

RESPONDENT'S ANSWER



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI :  
v. : CIVIL NO. B-75-321  
GEORGE C. WILKINSON, WARDEN, :  
FEDERAL CORRECTIONAL :  
INSTITUTION, DANBURY, ET AL :

RESPONDENT'S ANSWER

The respondent has been ordered to file an answer on or before December 3, 1975, setting forth the procedure by which the petitioner was classified a "Special Offender" and to further advise the court why the procedure was adequate in light of Cardaropoli et al v. Norton, Docket Nos. 75-2005, 75-2015, 75-7023/6, 75-2033 (2d Cir. Sept. 29, 1975).

The petitioner was sentenced to a term of imprisonment for three years in United States District Court for the Southern District of New York on or about January 2, 1972, for violation of Title 18, U.S.C. Sec. 1953, Interstate Gambling. The petitioner began serving this sentence on or about May 14, 1973, at the Federal Correctional Institution at Danbury, Connecticut. On October 9, 1973, the petitioner was sentenced to an additional term of imprisonment of five years for violation of Title 18, U.S.C. Sec. 1503, Influencing a Juror. The petitioner was placed on the "Special Offender" list on or about July 12, 1974, because of his affiliation with organized crime. The procedure that was used to place the petitioner on the "Special Offender" list was the same as was discussed in Catalano v. United States, 383 F. Supp. at 348-349 (D. Conn. 1974).

On or about May 31, 1974, the petitioner was granted a medical furlough and remained on furlough until June 24, 1974,



when he returned to the Federal Correctional Institution at Danbury, Connecticut. He was then transferred on or about July 30, 1974, to the Medical Center for Federal Prisoners at Lexington, Kentucky. He remained at Lexington until November 24, 1974, when he was transferred to the Medical Center for Federal Prisoners at Springfield, Missouri. He returned to the Federal Correctional Center at Danbury, Connecticut, on or about September 3, 1975, and has remained there since. He was therefore away from the Federal Correctional Institution at Danbury, Connecticut, when Judge Zampano filed his memorandum of decision in Catalano v. Norton, 383 F. Supp. 346 (D. Conn. 1974).

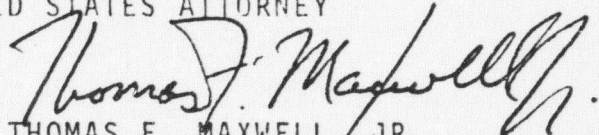
The respondent would suggest that the court enter a judgment similar to the judgment entered in Piselli v. Norton, Civil No. B-74-434, (D. Conn. 1974).

If the court enters an order requiring the respondent to remove and expunge the "Special Offender" classification from all records and files maintained by the Bureau of Prisons or any of its institutions, the respondent's will promptly comply with the court's order.

Respectfully submitted,

The Respondent

PETER C. DORSEY  
UNITED STATES ATTORNEY

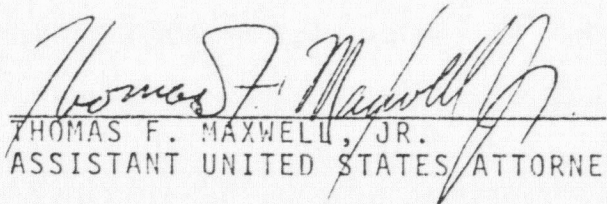
  
BY: THOMAS F. MAXWELL, JR.  
ASSISTANT UNITED STATES ATTORNEY

BEST COPY AVAILABLE



C E R T I F I C A T I O N

This is to certify that a copy of the foregoing  
Respondent's Answer was forwarded this 1st day of December,  
1975, to: Gino E. Gallina, Esq., Lenefsky, Gallina, Mass  
& Hoffman, 30 Broad Street, New York, NY, 10004.

  
THOMAS F. MAXWELL, JR.  
ASSISTANT UNITED STATES ATTORNEY

PETITIONER'S REPLY AND SUPPLEMENTAL  
AFFIDAVIT (12/5/75)

---



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x

NICHOLAS RATTENNI,	:	
	:	CIVIL NO. B-75-321
Petitioner,	:	
- v -	:	
GEORGE C. WILKINSON, WARDEN,	:	
FEDERAL CORRECTIONAL	:	
INSTITUTION, DANBURY, ET AL.,	:	
Respondents.	:	

-----x

PETITIONER'S REPLY AND  
SUPPLEMENTAL AFFIDAVIT

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for the petitioner and I make this affidavit both to reply to the respondent's answer and to amplify on an aspect of this action which has apparently been overlooked.
2. The original petition indeed requested expunction of the "Special Offender" classification, and the respondent's answer has conceded that such relief must be granted.
3. In addition to the ministerial act of expunction, however, and far more importantly, the petition requested that the consequences of the improper classification be remedied, i.e., that the denial of parole be reversed because said denial was based on the Special Offender classification.
4. At p. 3-B of the petition it was pointed out that "a prisoner upon being so designated [i.e., as a Special Offender] suffers a significant loss of rights with regard to such matters as ... the opportunity for early parole";



at p. 3-D it was stated that "the petitioner alleges by separate affidavit of his attorney that his denial of parole was specifically based on his being labeled a Special Offender, Organized Crime ... By the guidelines published by the Parole Board ... the defendant in light of the charge for which he was sentenced and for his performance while incarcerated, should have already been released. But without question, the placing of the petitioner in this Special Offender, Organized Crime category has caused his continued incarceration and the guidelines have been abandoned so far as the petitioner is concerned"; at p. 3-E petitioner specifically requested that the court "grant the petitioner a new parole hearing"; at pp. 3-F to 3-G petitioner's counsel, who <sup>was</sup> present at the first level parole hearing, set forth his recollection that the hearing was taken up almost completely with questions about petitioner's Special Offender classification.

5. The respondent's answer devoted not a single word to the above allegations.

6. The background of the denial of parole is as follows\*:

a) On or about January 29, 1975 petitioner had a parole hearing before a Hearing Examiner Panel in Springfield Medical Center (where he was then being held); as more fully set forth in the affidavit accompanying this petition, that hearing was devoted largely to exploring the Special Offender classification, petitioner denied the alleged association with certain notorious individuals, but his request to see the documents upon which the alleged associations were

\*With almost uncanny precision the actions of the Board of Parole in this case parallel those in Billiteri v. United States Board of Parole, 391 F.Supp. 260 (W.D.N.Y. 1975) (Billiteri I), op. after hrg. 400 F.Supp 402 (W.D.N.Y. 1975) (Billiteri II). These cases will be discussed, infra.



based was denied\*;

b) On February 10, 1975 the Panel's "decision" was rendered\*\*; it read "Refer to Board for original jurisdiction"\*\*\*;

c) On March 11, 1975 the Regional Director rendered his decision\*\*\*; in pertinent part it reads:

"Continue to expiration

REASONS: Your offense behavior has been rated as high. You have a salient factor score of 8. You have been in custody a total of 20 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of 20-26 months to be served before release for cases with good institutional program performance and adjustment. After careful consideration of all relevant factors and information presented, it is found that decision above the guidelines at this consideration appears warranted because your release at this time would depreciate the great seriousness of the offense committed and thus is incompatible with the welfare of society."

d) administrative remedies were exhausted.

7. At first blush, it might appear that the Special Offender Classification did not play any part in the Director's denial of parole, because that classification is nowhere mentioned in the decision; several factors, however, show this is not so;

a) the original panel was totally preoccupied with the classification;

b) the only basis for referring petitioner's case to the Regional Director, under the Board's own rules and regulations, was a belief petitioner

\*The entire hearing was recorded on a tape recorder; deponent does not know if the tape has been transcribed.

\*\*A copy of this "Notice of Action" is annexed as "Exhibit A".

\*\*\*This is in accordance with Board of Parole regulations where Special Offenders are involved. See 28 CFR 2.17, 2.27.

\*\*\*A copy of this "Notice of Action" is annexed as "Exhibit B".



was involved in organized crime (28 CFR 2.17(b)(2)); see, also, Billiteri I, supra, 391 F. Supp at 261 and n.1;

c) the designation "Continue to expiration" (which expiration date was almost three years in the future) is permitted only in "extraordinary situations" (23 CFR 2.37); see, also Billiteri I, supra, 391 F. Supp at 262;

d) the offense behavior was rated as "high" although none of the crimes set forth in the guidelines as "high" come even close to describing the crime petitioner pled to, i.e., an attempt to conspire to influence a juror under 18 U.S.C. §1503; high severity crimes include burglary, larceny, drugs, embezzlement, interstate transportation of securities, Mann Act, organized vehicle theft, receiving stolen property, robbery, theft or forgery (Adult Guidelines to 28 CFR 2.20); the crime that most closely approximates petitioner's would be "bribery of public officials" which is of "moderate" severity, see Billiteri II, supra, 400 F. Supp. at 407-409\*;

e) although it was acknowledged that under the Board's own guidelines a range of 20-26 months to be served was indicated, the Director went outside these guidelines (a decision which itself may only be made in exceptional circumstances, 28 CFR 2.20(c), [d]) and denied parole because "your release at this time" would depreciate the great seriousness of the offense committed and thus is incompatible with the welfare of society"; not surprisingly, this is

\*If petitioner's offense severity was reduced to moderate he would be entitled to parole in 16-20 months, a period long since passed, and he would be entitled to immediate release. Id.

The Director also gave petitioner a salient factor of 8. If the information petitioner has given your deponent is correct, he should have a salient factor of 9 (the possible area of conflict relates to Item H on the Guidelines to 28 CFR 2.20, i.e., verified employment, because petitioner has been retired for many years). If the salient factor is raised to 9, then even if the offense severity remains high the range of sentence still drops to 16-20 months; if the offense severity is moderate, the range of sentence drops even further, i.e., to 12-16 months.



the exact language used by the Board in Billiteri and condemned as "boilerplate language the Board used to deny the plaintiff's parole [and] which failed to state the facts upon which the conclusion was based", Billiteri II, supra, 400 F.Supp. at 403\*.

8. In sum, it is clear that the decision to deny petitioner parole was based solely upon the improper classification of petitioner as a Special Offender; since upon a new parole hearing it is clear that he would be entitled to parole (see second preceding footnote), he should now be released by the court so that he does not have to spend more time in prison awaiting this fore-ordained conclusion, see Billiteri, II, supra, 400 F.Supp. at 409; at the least, if this court intends to order a hearing or to direct a new parole hearing, petitioner should be released on bail or on his own recognizance\*\*.

WHEREFORE, it is respectfully requested that the court order petitioner paroled; in the alternative petitioner requests a new parole hearing or an evidentiary hearing, and release on bail or his own recognizance, and for such other and further relief as the court deems just.

GINO E. GALLINA

Sworn to before me this

day of December, 1975.

\*The language used both here and in Billiteri seems to be "Board of Parole-use" for Special Offender. As both the court in Billiteri and in Masiello v. Norton, 364 F.Supp. 1133, 1135 (D.Conn. 1973) noted, the Special Offender designation can only be used to deny parole where there is a "reasonable basis in fact" for it. Petitioner contends that there is none (or the prosecutor would have sought to comply with the Cardirapoli requirements); at the least <sup>there</sup> should be a hearing on this issue as in Billiteri.

\*\*Petitioner is only a few months short of 70 years of age, and he has cancer and heart problems.





UNITED STATES DEPARTMENT OF JUSTICE  
United States Board of Parole  
Washington, D.C. 20537

## Notice of Action

Name Nicholas RattenniRegister Number 78506-158 Institution Springfield NC

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Refer to Board for original jurisdiction

Conditions or remarks:

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

February 10, 1975

(Date Notice sent)

North Central

(Region - Specify)

ch

(Docket Clerk)

National Appellate Board

(Check)

INMATE COPY

EXHIBIT A

Copy delivered 2-11-75 - Grant



Parole Form H 7(a)  
(Rev. Dec. 1973)

UNITED STATES DEPARTMENT OF JUSTICE  
United States Board of Parole  
Washington, D.C. 20537

Notice of Action

Name Nicholas Rattenni

Register Number 78506-158 Institution Springfield

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Continue to expiration

REASONS:

Consideration of your case: Your offense behavior has been rated as high.  
You have a salient factor score of 8. You have been in  
custody a total of 20 months. Guidelines established by  
the Board for adult cases which consider the above factors'

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)  
indicate a range of 20-26 months to be served before  
release for cases with good institutional program perform-  
ance and adjustment. After careful consideration of all  
relevant factors and information presented, it is found  
that decision above the guidelines at this consideration  
appears warranted because your release at this time would  
depreciate the great seriousness of the offense committed  
and thus is incompatible with the welfare of society.

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that  
purpose may be obtained from your caseworker, and must be filed with the Chief, Classi-  
fication and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal  
may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate  
Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Ap-  
peal may be made to the National Appellate Board.

March 11, 1975

(Date Notice sent)

(Region - Specify)

mab

(Docket Clerk)

National Appellate Board

XXX

(Check)

INMATE COPY

EXHIBIT 6



AFFIDAVIT OF SERVICE  
BY MAIL

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

Helen Costello being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 46 Stratford Rd., Brooklyn, New York.

On December 5, 1975 deponent served the within "Petitioner's Reply and Supplemental Affidavit" upon Assistant United States Attorney Thomas Maxwell, attorney for Respondents in this action, at U.S. Attorneys Office, 915 Lafayette Blvd., P.O. Box 394, Bridgeport, Conn. 06601, the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

## Helen Costello

Sworn to before me this  
5th day of December, 1975.

Notary Public



RESPONDENT'S SUPPLEMENTAL ANSWER  
(12/17/75)

---



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI	:	
	:	
v.	:	CIVIL NO. B-75-321
	:	
GEORGE C. WILKINSON, Warden,	:	
Federal Correctional Institution,	:	
Danbury, et al	:	

RESPONDENT'S SUPPLEMENTAL ANSWER

The government submits that petitioner did not exhaust his administrative remedies as alleged in paragraph 6(b) of Petitioner's Reply and Supplemental Affidavit, in that petitioner never appealed the March 11, 1975, decision of the Regional Director.

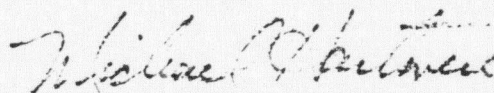
The offense behavior of petitioner was properly rated as "high" under the Adult Guidelines. (28 C.F.R. 2.20). Petitioner was sentenced to a term of imprisonment for three years and a fine of \$30,000 on January 2, 1972, for violation of Title 18, U.S.C., §1953, Interstate Gambling. Thereafter, petitioner was sentenced to an additional term of imprisonment of five years and a \$10,000 fine for violation of Title 18, U.S.C., §1503, Influencing a Juror. Petitioner began serving his first sentence on May 14, 1973. Petitioner's aggregate sentence therefore is five years, four months and twenty-four days. It is clear that the rating of petitioner's offense behavior as "high" was totally reasonable (see, for example, Adult Guidelines to 28 C.F.R. 2.20, footnote 4).



petitioner's incarceration. The government represents that it will make every effort to have petitioner appear before the United States Board of Parole within the next thirty days, for a parole hearing. However, the government strongly opposes petitioner's motion for bail pending the outcome of this action. The government submits the facts of this case fall far short of an extreme situation where bail might be warranted.

Respectfully submitted,

Peter C. Dorsey  
United States Attorney



By: Michael Hartmere  
Assistant United States Attorney

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Respondent's Supplemental Answer was forwarded this 17th day of December, 1975, to: Gino E. Gallina, Esq., 30 Broad Street, New York, N. Y. 10004.



MICHAEL HARTMERE  
ASSISTANT UNITED STATES ATTORNEY



PETITIONER'S SUPPLEMENTAL AFFIDAVIT  
(12/31/75)



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----X  
NICHOLAS RATTENNI,

Petitioner,

Civ. No. B-75-221

- against -

SUPPLEMENTAL  
AFFIDAVIT

GEORGE C. WILKINSON, WARDEN,  
DANBURY FEDERAL CORRECTIONAL  
INSTITUTION, et al.,

Respondents.

-----X  
STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

GENO E. GALLINA, being duly sworn, deposes and says:

1. That I am the attorney for the petitioner and I make this Supplemental Affidavit in connection with the previously filed Petition for a Writ of Habeas Corpus and to demonstrate that it is not moot because petitioner has received none of the relief he has sought.

2. That on the 19th day of December, 1975, at approximately 10:15 a.m., I appeared as a representative for inmate Nicholas Rattenni before Parole Hearing Examiners by the names of Mr. Tenny and Mr. Krueger, and Mr. Miller, the inmate's institutional caseworker.

3. That they initially stated that they received a telex dated the 17th day of December, 1975 from the Board of Parole indicating that Mr. Rattenni's parole status has been reviewed and that they were to consider anew his parole status as an original jurisdiction referral; that the severity of his offense behavior had been previously set outside the guideline range and that this hearing must set specific reasons for going outside of any guidelines.

BEST COPY AVAILABLE



4. That examiner Tenny further stated that the Parole Board on March 11, 1975, had continued the inmate to expiration; that his offense characteristic had been set at high; and that his release would depreciate the great seriousness of his crime against society.

5. That Mr. Tenny almost exclusively carried on all of the interrogatories during the hearing, with Mr. Krueger asking only a few questions at the end and Mr. Miller making no statement whatever.

6. Though I pointed out that Mr. Rattenni, on May 14, 1975, had finished serving the sentence for his gambling conviction, almost all of the inquiries by Mr. Tenny were directed toward inquiring into the severity of the offense behavior in regard to this gambling operation. When Mr. Rattenni was asked for his comments as to his involvement in his alleged organizing and running of the alleged gambling operation he pointed out that the government



which he had been tried with his co-defendants on one occasion and a reversal on appeal had resulted in the matter being set for a second trial. That prior to the second trial Mr. Rattenni pointed out that he plead guilty to the crime because his attorney, Mr. Cohn, had indicated to him that he was sure that the judge would not sentence him to any more than concurrent time running with his original gambling sentence. I further pointed out that, in fact, his co-defendants had actually been acquitted during the second trial.

8. That without any conference being held by the hearing examiners and without any discussion being made between the hearing examiners, Mr. Tenny, after his erroneous allegations concerning the gambling conviction for which Mr. Rattenni was no longer serving any sentence, held that his offense severity should be placed in a "high" category.

9. That the hearing examiner and I subsequently agreed that the salient factor score of eight was warranted.

10. That the hearing examiner then inquired, based on the same "facts" as the last hearing examiners in Springfield, Missouri, as to "special-organized crime" matters. That the hearing examiner alleged that Mr. Rattenni was a captain in an organized crime family and that he had associated with organized crime individuals in a criminal manner. Mr. Rattenni vehemently denied each and every one of the accusations, which are too prolific now to be able to recite, as all being absolute lies and unfounded in any fashion and asked for an opportunity to rebut them. This was refused.

That at no time did the hearing examiners inquire as to Mr. Rattenni's model prisoner behavior, his practice of volunteering for extra work details, his almost 40 years of unblemished record, his 40 years of legitimate employment and his taxpayer status, his wonderful family life which was exemplified



by his adopting an orphaned girl and an orphaned boy, one of whom subsequently married a police officer and the other is now engaged in legitimate business. Nor did they inquire into his and his family's present need for his being paroled based on the fact that his son from his second marriage, his first wife having died, is now 17 years of age and has been under severe emotional stress prompted by his father's incarceration and this all magnified by the fact that Mr. Rattenni is an old and extremely sick man.

12. That for the five minutes allowed to me as Mr. Rattenni's representative I attempted to briefly comment on each of the issues in Paragraph 11 above, which the hearing examiners made no comment as to or no inquiry about.

13. That as the hearing ended and we began to leave, to enable the hearing examiners to deliberate, I commented to the hearing examiners that both I and Mr. Rattenni had observed that his record and file were still designated "special offender" in various ways, to which Mr. Tenny and Mr. Miller stated that they had never received notice to take any of these materials out of the file and until they were so instructed they would continue to remain therein for anyone's consideration.

14. It is clear that this so-called "hearing" was, in reality, a duplication of the new-discredited Springfield, Missouri hearing, a sham, and an attempt to flaunt the authority of this Court; although the government has conceded that petitioner was improperly declared a "special offender," it is clear that precisely the same was done during the purported new hearing, i.e., once again, without any basis in fact ( Masiello v. Norton, 364 F. Supp. 1133 [D. Conn. 1973]) and without observing the mandates of procedural due process, ( Cardaropoli v. Norton, 513 F.2d 990 (2d Cir. 1975) petitioner has



been denied parole on the ground that he is a "Special Offender;"

15. No doubt the government will contend that the hearing examiners did not re-classify or re-consider petitioner a special offender; as stated in *Billiteri v. U.S. Bd. of Parole*, 391 F. Supp 260, 263 (D.C., W.D.N.Y., 1975) (*Billiteri I*) "the disclaimer has a hollow ring. " The progress report prepared by petitioner's case-worker (annexed as Exhibit "A" ) states "there is no new significant information;" as what, petitioner was only queried about what had been brought up at his prior hearing, which "facts" had previously been used to denominate him a special offender; furthermore, although the government had alleged that it would comply with any order of this Court directing removal of the "special offender" designation, no such order has been entered. Lastly, Mr. Miller, the caseworker present at the hearing conceded that the designation and information was still in the petitioner's file. The fact that the petitioner was not given even a "tentative" decision on parole also points to continued "special offender" classification and treatment, with exceptions not relevant here, it is only where a case is clearly going to be designated "Original jurisdiction, a pseudonym for special offender, (28 CFR 2, 17,) that the hearing examiners know that they are not going to be determining parole. See, *Project: Parole Release Decisionmaking and the sentencing process*, 84 Yale L.J. 810, 832 and stat. 102 (1975)\* and, as voted previously, the only original jurisdiction category that could fit petitioner is

---

\* 28 CFR 2.13 (a) explicitly states "At the conclusion of the hearing, the examiner panel shall inform the prisoner of its tentative decision, and if parole is denied, of the reasons therefor. Deponent was informed during the parole hearing at Springfield, Missouri that the policy of the Board of Parole is to have hearing examiners withheld even a tentative decision only in "Special Offender" situations.



"organized  
/crime" under 28 CFR 2.17 (b) (2) (It should be added that this is the precise  
route taken by petitioners previous parole application:)

16. Although the government will argue that administrative appeals  
ought to be pursued, there are two separate, albeit related, reasons why  
this is not so in this case,

(a) It is not clear that there is any administrative  
appeal; if, as happened re: the prior hearing, the  
regional director refers petitioners application to  
the National Appellate Board as an original juris-  
diction matter ( 28 CFR 2.17) then the so - called  
appeal ( under 28 CFR 2.27 (a) ) would be frivolous  
since it would be to the same body as made the  
decision allegedly being appealed;

(b) petitioner should not have to resort to any  
administrative appeals where it is clear that the  
entire administrative process is being used to  
harass him and deprive him of his rights; in such a  
situation, where the result is fore-ordained, "admin-  
istrati~~on~~ appeals [are]... not realistically available,  
Battle v. Norton 365 F. Supp. 925, 927 (D. C. Conn.  
1973), see also Anaya v. U. S. Bd. of Parole, 486 F  
2d 940 (5th Cir. 1973); Emma v. Armstrong, 473 F2d  
656 ( 1st Cir. 1973); \* to paraphrase Judge Curtin in

\* If, of course, this Court saw fit to require the exhaustion of administrative  
appeals and set bail at the same time any prejudice to petitioner would be  
substantially ameliorated.

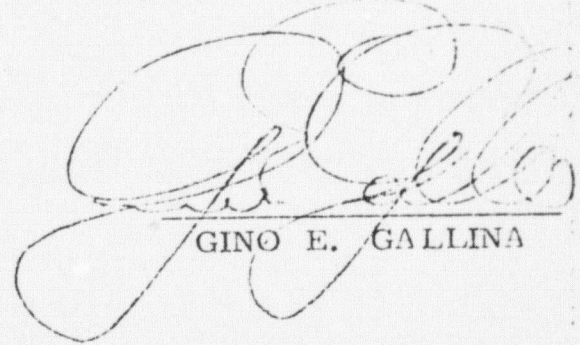


Billiteri v. U.S. Bd. of Parole, 400 F. Supp 402,  
409 ( D.C., W.D.N.Y., 1975 ) ( Billiteri II ),

"another remand to the administrative processes  
of the Board, in the light of its past performance, is  
undeserved as well as unfair to the plaintiff".

17. The petitioner is a 69 year old man in failing health\*, while it is  
of course, the prerogative of the Court to determine what, if any, relief is to  
be given in this case ( e.g., a hearing in court, a third parole hearing,  
direction to exhaust administrative remedies ) you deponent begs the Court  
to grant bail. This way can the Court stop the clock on the bureaucratic run-  
around that petitioner has been receiving for the last year; only in this way can  
the Court assure that if petitioner is ever successful, his victory is not a  
totally pyrrhic one.

WHEREFORE, petitioner requests that he be released on bail and that  
the Court direct such other and further proceedings as are just and proper.



GINO E. GALLINA

Sworn to before me this  
26th day of December, 1975.

*Helin Costello*

HELEN COSTELLO  
Notary Public, State of New York  
No. 24-45077  
County of New York  
Commission Expires March 30, 1976

\* The most recent report on petitioner's health is annexed hereto as  
Exhibit "B"



## EXHIBIT "A"

BP-CLASS-3  
(Rev. 11/74)Date 12/19/75UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONSFCI, Danbury, Conn.  
INSTITUTION

Inmate Reviewed and/or Received Copy

N.D. Rattenni 78506  
SIGNATURE AND DATE 12/19/75

## PROGRESS REPORT

IRH Interim Annual OtherName: RATTENNI, Nicholas Reg. No: 78506-158 U-COffense: Interstate Gambling/Conspiracy to Influence Age: 69  
JurorsSentence: 5 yrs. 4 mos. 24 dy began: 10/09/73 Months Served: 31Days EGT: 177 Days FGT: 0 Tentative Release: 11/22/76Last Board Action and Date: 12/17/75 Re-open & Place on December, 1975  
Hearing Docket in response to Court Order from U.S. District Court  
in Connecticut - Judge Newman.  
Detainers: NONE KNOWNCodefendants: Louis Boggia, Joseph Fiori, Michael Roman-all acquitted.NEW INFORMATION

There is no new significant information.

INSTITUTIONAL ADJUSTMENT

Since Mr. Rattenni last appeared before the last Board of Parole, his institutional adjustment has been uneventful. Although he was transferred to FCI, Lexington, Kentucky for medical treatment on July 31, 1974, and later, on November 24, 1974, was transferred to MCFP, Springfield, Mo. for further evaluation relative to a mass in his left upper quadrant, he refused the recommended surgery and was therefore transferred back to FCI, Danbury at his own request to place him nearer to his home.

He arrived at Danbury, on September 3, 1975 and achieved reclassification on September 23, 1975 at which time he was assigned to our food service department. He is employed in the vegetable room and the detail supervisor

"Exhibit A"



-Class-2  
Rev. 11/74)

UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS

PROGRESS REPORT

Committed Name RATTENNI, Nicholas Reg. No. 78506-158 Date 12/19/75

-page 2-

indicates that he is a good worker, who is prompt and performs his duties in an exemplary manner. He currently receives meritorious good time for his efforts on this detail. He is presently housed in our dormitory unit where his overall adjustment has been described by the housing officer to be average. He conforms to accepted standards of sanitation and has posed no behavioral problems in quarters. Mr. Rattenni indicates that he spends much of his leisure time reading and taking walks for exercise.

Mr. Rattenni received a disciplinary report on October 16, 1975 for interhouse visiting. He was warned and reprimanded for this behavior.

Our medical department indicates that Mr. Rattenni's current medical status is stable. He is presently under treatment for hypertension and has complained of painful feet.

RELEASE PLANS: Mr. Rattenni indicates that his release plans will be to return to reside with his wife and son in Bronxville, New York. He states that he is retired but may work in the real estate business on a part time basis.

- A. RESIDENCE: With wife, Evelyn Rattenni at 107 Rock Ledge Road, Bronxville, New York 10708
- B. EMPLOYER: Retired-to be determined.
- C. ADVISOR: USPO is requested.
- D. USPO: John T. Connolly, Chief S/NY

EVALUATION OF RELEASE READINESS & RECOMMENDATION

Nicholas Rattenni has presently served (31) months of a (5) yr. (4) mo. (24) day sentence for Interstate Gambling & Conspiracy to Influence A Juror. He was convicted of the Gambling offense after a jury trial but continues to maintain his innocence. He states that although he pled guilty to the Influencing the Juror charge, that he is innocent of this crime and that he pled guilty because he did not wish to risk the publicity of a trial and that he was lead to believe that he would receive a (3) year concurrent sentence. He also received a \$30,000.00 committed fine and a \$10,000.00 non committed fine which he states



Class-2  
Rev. 11/74)

UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS

PROGRESS REPORT

Committed Name RATTENNI, Nicholas Reg. No. 78506-158 Date 12/19/75

-page 3-

he is presently paying at a rate of \$6,000.00 every (6) months. He advises that there is presently \$10,000.00 remaining to be paid on this fine. Prior to his conviction for the instant offenses, Mr. Rattenni's last criminal conviction was in 1927 for Second Degree Robbery. His overall response to the institutional setting has been favorable and at the same time uneventful. At his initial commitment, he was not seen as an individual with any correctional program needs and on this basis, the unit team feels that a recommendation for or against parole at this time is not advisable.

December 18, 1975

D.T. Miller, Casemanager, Unit C



UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
DANBURY, CONNECTICUT 06813

October 21, 1975

Mr. Daniel Tedrick  
North East Regional Office  
U. S. Department of Justice  
Scott Plaza II  
Industrial Highway  
Philadelphia, Pa. 19113

RE: Ratteni, Nicholas  
NO: 78506-158

Dear Sir:

A review of our records shows that the above named inmate was first incarcerated at Federal Detention Headquarters, New York and transferred to our institution on May 15, 1973. He gave a history of coronary artery disease and hypertension. This was controlled by medication. Following admission to our institution he was seen on a monthly basis by the Chief Medical Officer who stated that his condition remained stable on his regime. His complaint of hoarseness was reviewed by our ENT consultant, who suggested further evaluation. EKG was within normal limits, and his glucose tolerance test was also considered to be within normal limits. On July 30, 1973 he was transferred to St. John's Riverside Hospital where under direct laryngoscopy a stripping of the right vocal cord was made. Pathological diagnosis showed only a squamous papilloma.

His cardiovascular status was thoroughly investigated prior to coming to our institution on March 12, 1973 at St. Joseph's Hospital, Patterson, New Jersey, including coronary cineangiography. His medical history at that time suggested a recent episode of chest pain for nine months duration. His past history suggested hypertension, diabetes and bilateral inguinal hernia. The diabetes was controlled by diet, and the hypertension with therapy. On March 12, 1973 he had syncopal episodes for which cardio-pulmonary resuscitation had to be made. The results of the cineangiography showed diffuse coronary atherosclerosis, however the conclusion was that the patient was not a surgical candidate at that time and medical management would be the course to follow.

-EXHIBIT B-



Mr. Daniel Tedrick

October 21, 1975

Page 2

RE: Ratteni, Nicholas  
NO: 78506-158

Further evaluation of his cardiac status was done by our consultant, Dr. Sherman on February 25, 1974, who apparently felt there was no significant change since his previous evaluation. His cholesterol and triglycerides were normal. To complete this evaluation a hypertensive urogram and a post-voiding cystogram was done on May 20, 1974. A normal urinary tract was found; at this time a 14 cm. mass located in the left upper quadrant was noted; also a hiatus hernia. On May 31, 1974 he was evaluated at Yonkers Professional Hospital, Yonkers, New York for the splenic mass. The conclusion after a very thorough work-up was that he had a benign sub-mucous gastric mass and a left inguinal hernia; also diverticuli of the colon. He was discharged on June 21, 1974. Biopsy of the gastric tumor and esophageal washings showed only inflammatory tissue. At that time also a liver scan of the liver and spleen was made and no isotope deficit was found.

He complained of two episodes of tarry stools and was taken on 6-26-74 to Danbury Hospital where it was felt that he was not a GI bleeder and he was then transferred directly to FCI, Lexington (by air) on July 31st. On the way down he felt weak and on admission his hematocrit and hemoglobin were low and had to be transfused. He was stabilized at Lexington and returned to population on August 14, 1974. During his stay there a glucose tolerance was done and appeared to be within normal limits and a diagnosis of diabetes mellitus was not substantiated.

On November 24, 1974 he was transferred to Medical Center for Federal Prisoners in Springfield, Missouri (from FCI, Lexington) for further evaluation of his mass in the left upper quadrant. The patient was advised to have a laparotomy for identification of the LUQ mass but declined the surgery, and requested to be transferred to an institution nearer his home. On January 29, 1975 he was discharged from the hospital to their medical domiciliary status.

The final conclusion of his hospital stay in Springfield following a barium enema showed innumerable diverticuli. The exact etiology for his GI bleeding was not determined, and except for the initial episode there was no further evidence of GI bleeding.



Mr. Daniel Tedrick

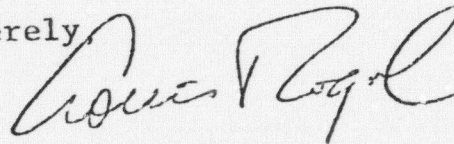
October 21, 1975

Page 3.

RE: Ratteni, Nicholas  
NO: 78506-158

On March 29, 1975 he was re-admitted to the hospital in Springfield and discharged on April 2, 1975 and a biopsy of a lesion on his right vocal cord was done. Biopsy showed a keratotic papilloma and again returned to population. On August 19, 1975 he was transferred to FCI-Danbury where his medications were continued. To date he has remained stable. ECG within normal limits and hypertension controlled by medication. His only complaint since his re-admission to this institution has been of painful feet and he is to be evaluated by our consultant orthopedic surgeon.

Sincerely,



Louis Rogol, M.D.  
Chief, Health Programs

cc: Warden G. C. Wilkinson  
Danbury

Lynda Ford  
Regional Office



PETITIONER'S SUPPLEMENTAL AFFIDAVIT  
(1/19/76)

---



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI,  
Petitioner,

-against-

Civ. No. B-75-321

GEORGE C. WILKINSON, WARDEN,  
DANBURY FEDERAL CORRECTIONAL  
INSTITUTION, et al.,  
Respondents.

SUPPLEMENTAL  
AFFIDAVIT

STATE OF NEW YORK )  
ss.:  
COUNTY OF NEW YORK )

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for the petitioner herein and I make this  
Supplemental Affidavit in support of petitioner's request for a Writ of Habeas  
Corpus.

2. On December 19, 1975 petitioner appeared before a hearing exam-  
iner panel for what was to be a "new" parole hearing, without a " special  
offender " classification, at the end of the hearing petitioner was given no  
decision and in my affidavit of December 26, 1975 I predicted that this refusal  
meant that, as with the prior parole hearing at Springfield, petitioner's case  
would be referred to the National Directors as an "original jurisdiction"  
matter (Affidavit of December 26, 1975 at 5-6).

3. Unfortunately, my prediction was correct; on January 8, 1976 peti-  
tioner received a "Notice of Action" ( dated December 31, 1975 ) ( copy  
attached as Exhibit A ) stating:

" Your case has been referred  
to the National Directors for  
reconsideration Per [28] CFR  
2.17 (b) (2) ";

on January 12, 1976 petitioner received a "Correction to <sup>Notice</sup> ~~Value~~ of Action



dated December 31, 1975" ( itself dated January 8, 1976 ) (copy attached as Exhibit B), stating:

" Your case has been designated as Original Jurisdiction and referred to the National Directors for their decision.

Your offense involved an unusual degree of sophistication and planning and was part of a large scale criminal conspiracy and a continuing criminal enterprise." \*

4. Based on the foregoing, it must be conceded by all concerned that although the words "special offender" may never have been used by the parole authorities, petitioner is still suffering from the unconstitutional imposition of that label; it must be recalled that although the Government had gratuitously conceded to remove the special offender classification " if the court enters an order requiring [it]", no such order has ever been entered; similarly, although the hearing examiner panel said they were to consider petitioner's parole as though it were an original application, their questions, statements (and notations on their files) made it clear they still considered petitioner a special offender; original jurisdiction referrals under 28 CFR 2.17 (b) (2) are used exclusively for special offender cases ( see Cardarapoli v. Norton, 523 F 2d 990, 994 [2d Cir 1975]\*)

\* Aside from the fact that the hearing examiners spent virtually no time discussing petitioner's commitment offense, had they done so they would have found that it involved a rather clumsy, amateurish attempt to bribe a juror. The Board of Parole's attempt to convert this into a "basis in fact" for original jurisdiction, by ritualistically spouting the verbatim language of 28 CFR 2.17 (b) (2), is a further example of the fact that the new hearing was a complete and total sham.

\* Incorrectly cited as "513 F 2d" in the Affidavit of December 26, 1975 at 4.



5. In sum, petitioner is still being treated as a special offender and is still being denied parole because of this unconstitutional classification; he should not be made to engage in further futile administrative appeals where the record of the agency involved has been one of delay, obfuscation and outright fraud; he should be granted his immediate release or, at the least, bail pending any further proceedings.

WHEREFORE it is respectfully requested that the Writ issue or that petitioner be granted bail.

---

GINO E. GALINA

Sworn to before me this

day of January, 1976.

---

Notary Public





A 57  
UNITED STATES DEPARTMENT OF JUSTICE  
United States Board of Parole  
Washington, D.C. 20537

Notice of Action

Name NICHOLAS RATTENNI

Register Number 78506-158 Institution Danbury

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Your case has been referred to the National Directors  
for reconsideration.

Conditions or remarks: Per CER 2.17(b)(2)

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

*Rec'd copy 01-08-76*

*N. A. Ratteni*

FED. COR. INST.  
DANBURY, CT.  
JAN 8 11 29 AM '76

**Appeals procedure:** You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

Dec. 31, 1975

(Date Notice sent)

NORTHEAST

(Region - Specify)

ljb

(Docket Clerk)

National Appellate Board

(Check)

INMATE COPY

EXHIBIT A



A 58

UNITED STATES DEPARTMENT OF JUSTICE  
United States Board of Parole  
Washington, D.C. 20537



Notice of Action

Name NICHOLAS RATTENNI

Register Number 78506-158 Institution Danbury

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Your case has been designated as Original Jurisdiction and referred to the National Directors for their decision.

Conditions or remarks: \_\_\_\_\_

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Your offense involved an unusual degree of sophistication and planning and was part of a large scale criminal conspiracy and a continuing criminal enterprise.

CORRECTION TO NOTICE OF ACTION DATED DECEMBER 31, 1975

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

January 8, 1976

(Date Notice sent)

(Region - Specify)

NFE

(Docket Clerk)

National Appellate Board

XXX

(Check)

INMATE COPY

EXHIBIT B

Jan 12  
RECEIVED  
JAN 12 1976  
U.S. BOARD OF PAROLE  
DANBURY  
01-12-76 Copy to inmate 411  
M. A. Kallman



PETITIONER'S SUPPLEMENTAL AFFIDAVIT  
(2/6/76)

---



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x  
NICHOLAS RATTENNI,

Petitioner,

Civ. No. B-75-321

- against -

SUPPLEMENTAL  
AFFIDAVIT

GEORGE C. WILKINSON, WARDEN,  
DANBURY FEDERAL CORRECTIONAL  
INSTITUTION, et al.,

Respondents.  
-----x

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

GINO E. GALLINA, being duly sworn, deposes and says:

1. I am the attorney for the petitioner, am fully familiar with the facts and circumstances of this case, and make this affidavit to advise the Court of the most recent activity of the Parole Board.

2. As the court is aware, after petitioner's last appearance before the Parole Board his case was designated "Original Jurisdiction" because his "offense involved an unusual degree of sophistication", etc., under 28 C.F.R. 2.17(b)(2) (see Supplemental Affidavit of January 12, 1976 and Exhibits A and B therefo).

3. On January 21, 1976 petitioner received the decision of the Regional Directors (see Exhibit A); it stated that he should "continue to expiration" for the following reasons:

"Your offense behavior has been rated as high severity because you committed two separate offenses. You have a salient factor score of 8. You have been in custody a total of 32 months. Guidelines established by the Board for adult cases which consider the above



factor indicate a range of 20-26 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, it is found that a decision at this consideration above the guidelines appears warranted because you were the head of an organized gambling operation that involved the bribery of policemen to protect illegal gambling activities."

4. It has been petitioner's continuous contention that he has been denied parole because he was improperly designated a "special offender"; the most recent Parole Board action proves this.

5. Although petitioner is presently serving time because of his plea to an attempt to bribe a juror, the Board had to hark back to a much earlier interstate gambling conviction to deny him parole\*. They did this (a) by raising his offense severity from moderate to high by referring to the gambling charge, (b) by lowering his salient factor score from 10 to 8 (by lowering the points received on Items A and B from 2 to 1) based on the prior charge, and (c) by using this charge to justify going beyond the guidelines of 20 - 26 months (which would apply even if the offense severity and salient factor scores were correct):

"[A] decision at this consideration above the guidelines appears warranted because you were the head of an organized gambling operation that involved the bribery of policemen to protect illegal gambling activities."

6. The foregoing clearly demonstrates that petitioner is still being considered a "special offender". He was treated as an original jurisdiction case under 28 C.F.R. 2.17(b)(2), which is reserved for special offenders.

Cardaropoli v. Norton, 523 F.2d 990, 994 (2d Cir. 1975). And, the Board

\*Petitioner finished serving the interstate gambling charge sometime in May 1975. Yet it is this charge on which the "special offender" treatment was based.



was forced to refer to a 6-7 year old charge so that they could apply the label of "organized" criminal activity to petitioner's crime\*.

7. By way of anticipation, petitioner still maintains that he should not be forced to pursue administrative appeals before having an impartial court hear his claims (unless, of course, he is admitted to bail during this period). Because of its erroneous, dilatory, and perfidious tactics the Board has lost all of its credibility. Petitioner should not be required to engage in futile procedures fore-ordained to result in the same denials as already received\*\*.

---

\*It should be pointed out that petitioner was never advised either before or at the parole hearing that the interstate gambling charge would be used to deny him parole (I must bring to the Court's attention that I requested a copy of the tape recording and Hearing Summary of the parole hearing on December 29, 1975 and I have received only deafening silence by way of reply). Cf. Cardaropoli v. Norton, supra.

Furthermore, the most that the very court which affirmed the gambling conviction was willing to say about petitioner's involvement in the operation was that he had a "working relationship" with one of the co-conspirators and was "more than a drinking companion" of another. United States v. Cassino, 467 F.2d 610, 617 (2d Cir. 1972).

Lastly, even if petitioner had been the "head" of such an organization, he cannot be now, since he has been in prison for over 2 1/2 years.

In other words, even assuming the gambling charge could have been used, there was an absence of procedural due process and an erroneous assumption of fact. Cf. United States v. Tucker, 404 U.S. 443 (1972) (use of erroneous information at sentence improper).

\*\*An "Appeal" to the National Appellate Board from a decision of the Regional Directors is particularly futile and frustrating since the same persons who are Regional Directors will sit on that Board. 28 C.F.R. §2.1(b); see Minutes of Hearing in Biancone v. Norton, B-74-473, dated 9/30/75 at 2-6, 85-88 (set forth as Exhibit B).



WHEREFORE, petitioner requests that the Writ be granted or that  
he be admitted to bail pending any further proceedings.



GINO E. GALLINA

Sworn to before me this

3rd day of February 1976.



Notary Public

HELEN COSTELLO  
Notary Public, State of New York  
No. 24-4510  
Qualified in Kings County  
Commission Expires March 30, 1978



A 64

## UNITED STATES DEPARTMENT OF JUSTICE

United States Board of Parole

Washington, D.C. 20537



## Notice of Action

Name Nicholas RattenniRegister Number 78506-158 Institution Danbury

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Continue to Expiration.

Conditions or remarks: \_\_\_\_\_

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Your offense behavior has been rated as high severity because you committed two separate offenses. You have a salient factor score of 8. You have been in custody a total of 32 months. Guidelines established by the Board for adult cases which consider the above factor indicate a range of 20-26 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, it is found that a decision at this consideration above the guidelines appears warranted because you were the head of an organized gambling operation that involved the bribery of policemen to protect illegal gambling activities.

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

January 14, 1976

(Date Notice sent)

(Region - Specify)

NFB

(Docket Clerk)

National Appellate Board

XXX

(Check)

INMATE COPY

EXHIBIT "A"



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
:  
JOSEPH BIANCONE,

Plaintiff,

vs.

: B-74-473 Civil

JOHN J. NORTON, Warden, Federal  
Correctional Institution, Danbury,  
Connecticut, et al.,

Defendants.  
-----X

New Haven, Connecticut  
September 30, 1975

TESTIMONY OF: DANIEL CAPODANNO

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

HAROLD JAMES PICKERSTEIN  
MICHAEL HARTMERE

Assistant U. S. Attorneys  
915 Lafayette Boulevard  
Bridgeport, Connecticut

Messrs. SCHLESS and SAGARIN  
255 Main Street  
Bridgeport, Connecticut

By: J. DANIEL SAGARIN

SANDERS, GALE & RUSSELL  
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET  
HARTFORD, CONNECTICUT

111 CHURCH STREET  
NEW HAVEN, CONNECTICUT

EXHIBIT "B"



A 66

1 DANIEL CAPODANNO, called as a witness,  
2 having first been duly sworn by the Clerk of the Court,  
3 was examined and testified as follows:

4 THE CLERK: Please state your name and address  
5 for the record.

6 THE WITNESS: Daniel Capodanno. Washington, D.C.

7 DIRECT EXAMINATION

8 BY MR. SAGARIN:

9 Q Mr. Capodanno, you are from Washington, D.C. What is  
10 your occupation?

11 A I am the National Appellate Board Executive for the  
12 United States Parole Board.

13 Q And as the National Appellate Board Director --

14 THE COURT: Executive.

15 A Executives.

16 Q -- Executive, what are your duties?

17 A My duties are to assist the members of the National  
18 Appellate Board, and also various other staff duties as a member  
19 of the staff of the United States Parole Board.

20 Q Who are the members of the National Appellate Board?

21 A The members of the National Appellate Board are Mr.  
22 Curtis Crawford, Mr. George Read, and Mr. Morris Ziglar, who is  
23 also the chairman of the United States Parole Board.

24 Q What is the jurisdiction of the National Appellate  
25 Board? What cases do they hear?



1  
2 A The National Appellate Board hears cases that have  
3 been referred to it as a result of an appeal by a prisoner who  
4 has received a decision concerning his parole.

5 Q All right. Does it apply to all parole -- could they  
6 have jurisdiction over all parole decisions?

7 A No, the National Appellate Board has jurisdiction over  
8 cases that were referred to it on the basis of an appeal.

9 Q And may any prisoner who has an adverse parole decision  
10 take an appeal to the National Appeal Board?

11 A Within certain limitations, their time limitations  
12 and certain other criteria.

13 Q And did you bring -- what are the other criteria?

14 A Well, basically, that the decision was rendered at  
15 the time that the appeal process was in effect. The Parole  
16 Board did not always have an appeal process. That's --

17 Q Now, in the -- are you familiar with the general parole  
18 procedure for inmates in federal correctional institutions?

19 A Yes, I am.

20 Q An inmate seeks parole, what does he have to do?

21 A Depending on the kind of sentence he has, he may have  
22 to actually apply in writing for parole consideration, at which  
23 time he is then scheduled by the Bureau of Prisons staff for  
24 hearing before the United States Parole Board Examiner's...

25 Q Where do they examine the petitioner?



1  
2 A It's usually done at a federal institution.

3 Q Who makes the decision on that application?

4 A Who makes the final decision? There are a number of  
5 routes it may take.

6 Q All right. Can you describe for the Court the various  
7 routes which a parole decision may follow?

8 A The decision may be made at our regional office, which  
9 is the first level decision.

10 Q What regional office would apply to inmates serving  
11 in Danbury?

12 A In Danbury? That would be our Philadelphia office,  
13 the Northeast Regional Office.

14 Q And how many members of the regional office consist  
15 of the decision making body?

16 A There is one parole board member in Philadelphia.

17 Q And who is that?

18 A Mr. Curtis Crawford.

19 Q And what other courses of -- may the parole decision  
20 take?

21 A It may be referred to Washington to the national  
22 directors.

23 Q All right. And who are the national directors?

24 A Mr. Crawford, Mr. Reed and Mr. Zigler.

25 Q The same people who make up the National Appellate Board?



1  
2 A That is correct.

3 Q What other course may a parole decision take?

4 A It may also be referred to the national directors as  
5 an original jurisdiction case.

6 Q All right. Under what circumstances may it be referred  
7 to the national directors as an original jurisdiction case?

8 A May I read from our procedures?

9 Q Is there a federal regulation?

10 A Federal regulations.

11 Q Which are the applicable regulations?

12 A This is the March 10th, 1975 Federal Register. Under  
13 Section 2.17 it reads: "The Regional Director may designate  
14 certain cases as original jurisdiction cases. The Regional  
15 Director shall then forward the case with his vote and any  
16 additional comments he may deem germane to the national directors  
17 for decision. Decisions shall be based upon the concurrence  
18 of three votes with the appropriate regional director and each  
19 national director having one vote."

20 Q So that it is your understanding that that --

21 THE COURT: Did you finish reading that?

22 THE WITNESS: Well, there are four various cate-  
23 gories in basic criteria.

24 THE COURT: Before that, isn't there another  
25 sentence?



THE WITNESS: Yes. "Additional votes, if required, shall be cast by the other regional directors on a rotating basis as established by the chairman of the board."

THE COURT: And then there are four categories?

THE WITNESS: That's correct.

THE COURT: All right.

Q Are you reading from what is a current copy of the regulations which were in effect?

A In effect as of what time?

Q In effect as of now.

A These regulations are in effect as of right now, yes, sir.

Q And they were in effect in March of 1975?

A They were in effect in March of 1975, yes, sir.

MR. SAGARIN: Your Honor, I think it would be useful for these to be part of the record, even though it's something the Court can take judicial notice of.

THE COURT: Well, I do have a copy of the regulations and I followed it along as the witness was testifying. Apparently, they're the same, but you can put a copy into the record if you wish.

MR. SAGARIN: I'll probably put it in later.



1  
2 A We have national directors and National Appellate  
3 Board members.

4 Q Who is on the national directors?

5 A We have three national directors, chairman of the  
6 Parole Board, Mr. Morris Zigler, the vice chairman of the Parole  
7 Board, who is Mr. Curtis Crawford, and a member of the Parole  
8 Board, Mr. George Reed, are all national directors.

9 Q And to be successful before the national directors,  
10 you need two out of three votes, is that correct?

11 A In an original jurisdiction case?

12 Q Yes.

13 A Well, no, you need a three out of five vote in favor  
14 of one action or another.

15 Q Are there more than three members on the national --  
16 who hear the national directors case?

17 A No, there are three national directors, but you have  
18 to remember the regional director casts the first vote, and so  
19 when we come in, then we have three more members, which would  
20 mean you have four members seeing the case, and if you get  
21 three out of the four to agree, then you have a majority decision.  
22 If not, then it goes out for a fifth vote, and hopefully, you  
23 will get a three out of five decision.

24 Q It goes out to where?

25 A To another regional director.



Q Then, as far as the National Appellate Board is concerned, who sits there?

A The National Appellate Board?

Q Right.

A The same three members, Mr. Zigler, Mr. Crawford and Mr. Reed.

Q Reviewing their own previous decision?

A Well, if they were the ones who reviewed -- who made the original decision of three out of five, then, yes, it could very well come in --

Q You are assuming that those were the three that voted for decision being appealed, they would hear their own appeal, is that correct?

A But you don't have the appeal process down quite right. In appeal of an original jurisdiction case, the entire Board of Parole makes the decision on appeal.

Q And who is the entire Board of Parole?

A Well, at present, due to vacation and a recent death, there are now six members of the Parole Board.

Q Who are they? What are their ordinary jobs?

A Well, some are regional directors and some are national directors and National Appellate Board members. They carry various responsibilities.

Q How long have there been six members?



1  
2 A Well, there's been six members for quite awhile.  
3 There's been more. I'm not sure I quite understand what you  
4 are saying.

5 Q In July of 1975, how many members were there on the  
6 National Appeal Board who would hear an appeal from original  
7 jurisdiction matter? 7  
8

9 A How many members were there in July of '75? To hear  
10 an appeal of an original jurisdiction case? I believe there  
11 were seven at the time.

12 Q Do your records reflect how many heard Mr. Biancone's  
13 case?

14 A The appeal, you are referring to?

15 Q Yes.

16 A Seven members.

17 Q How many of those members had previously heard --  
18 had previously participated in the decision from which an appeal  
19 was taken?

20 A That would be the May decision?

21 Q That's correct.

22 A Three members of the Parole Board who considered the  
23 appeal of Mr. Biancone, also considered the reopening as a result  
24 of medical information in May of 1975.

25 Q In addition to the regional director?

A Well, no, three members. We only need three. You



only need three, and the first three agree, then that's all will see the case.

Q So three members participated in the decision in May?

A Three members participated in the decision in May. X

Q And then seven in July?

A That's correct. X

Q By the way, in either the May or the July decision, is there any reference to Mr. Biancona's medical status?

A In the May? Well, the May decision was based on medical information that was submitted by the institution, that was the whole reason the case was reopened, so that was the whole purpose of the review on the record, the medical information.

Q Is there any reference in that decision to medical information? To having considered medical information?

A I'm sorry?

Q Is there any reference in that decision to having considered medical information?

A There is in the notice that caused the case to be reopened. It says right on the notice, if I'm not mistaken. Let me see. This is an order dated March the 11th, 1975, that was sent to Mr. Biancona, and it states: "Reopen and continue for a review on the record, OJ," which stands for original jurisdiction, "as a result of new medical information." X

Q And so it's your testimony that the purpose of that



A 75

MEMORANDUM OF DECISION DISMISSING  
PETITION FOR WRIT OF HABEAS CORPUS -  
NEWMAN, U.S.D.J. (3/2/76)



FILED

MAR 2 2 20 PM '76

U.S. DISTRICT COURT  
NEW HAVEN, CONN.UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI :  
 V. : CIVIL NO. B-75-321  
 GEORGE C. WILKINSON, WARDEN, : **MICROFILM**  
 FEDERAL CORRECTIONAL :  
 INSTITUTION, DANBURY, ET AL : **MAR 3 1976**

**BRIDGEPORT**  
MEMORANDUM OF DECISION

Petitioner, presently incarcerated at the Federal Correctional Institution, Danbury, Connecticut, challenges a denial of parole, claiming that the National Directors relied upon an unlawful "special offender" classification. The National Directors' statement of reasons, however, adequately justifies their decision to continue incarceration beyond the guideline range. The petition is therefore dismissed.

Petitioner was convicted of multiple interstate gambling violations in contravention of 18 U.S.C. § 1952, see United States v. Cassino, 467 F.2d 610 (2d Cir. 1972), cert. denied, 410 U.S. 942 (1973), and was sentenced on January 2, 1972, to serve three years. Subsequently, he pled guilty to involvement in a conspiracy to influence a juror, see 18 U.S.C. § 1503, and was sentenced to five years. Petitioner was classified a "special offender" concededly in violation of the principles later to be enunciated in Catalano v. United States, 383 F. Supp. 346 (D. Conn. 1974), and Cardarop v. Norton, 523 F.2d 990 (2d Cir. 1975). He was subsequently



transferred to the Medical Centers for Federal Prisoners in Lexington, Kentucky, and Springfield, Missouri.

On January 29, 1975, while at the Springfield facility, petitioner was given an institutional parole hearing. At that hearing he was asked about his association with notorious individuals in criminal enterprises. Petitioner's case was referred as an original jurisdiction case, 28 C.F.R. § 2.17, to the National Directors. They decided that petitioner should be continued to the expiration of his sentences. In their statement of reasons, the National Directors rated petitioner's offense behavior as high severity, calculated his salient factor score to be eight, and noted that he had been in custody 20 months. Though petitioner was still within the applicable guideline range of 20-26 months, the Directors found that "decision above the guidelines at this consideration appears warranted because . . . release at this time would depreciate the great seriousness of the offense committed and thus is incompatible with the welfare of society." See 28 C.F.R. §§ 2.18(a), 2.13(b)(1). This rationale seems intended to justify future incarceration beyond the guideline period. It might well have been subject to challenge for failing to advise petitioner what offense behavior was being considered and what aggravating circumstances were thought to justify incarceration beyond the guideline period. Lupo v. Norton, 371 F. Supp. 156, 163 (D. Conn. 1974).

A petition for a writ of habeas corpus was filed in the District Court for the Western District of Missouri,



Civil No. 74 CV 690-S-WHB, but it was dismissed because of petitioner's failure to exhaust administrative remedies. A second petition, Civil No. 75 CV 189-WHB-R, was withdrawn upon petitioner's transfer back to Danbury. It is unclear whether the decision of the National Directors was ever appealed to the entire Board of Parole, see 28 C.F.R. § 2.27.

Upon his return to Danbury, petitioner filed again for a writ of habeas corpus. He claimed that he had been classified a "special offender" and that he should be accorded a new parole hearing. The Government conceded petitioner's unlawful "special offender" classification. A new parole hearing was scheduled by the Board of Parole. On December 19, 1975, an institutional hearing was held for petitioner, 28 C.F.R. §§ 2.12, 2.14, at which he was allowed to have his counsel as his personal representative. The Hearing Examiner Panel inquired into petitioner's role in the gambling and bribery operation that resulted in his prior conviction. The Panel confronted him with allegations that he had associated with organized crime figures in criminal activity. At the conclusion of the hearing, petitioner's representative was allowed to make a statement in petitioner's behalf.

On December 31, 1975, petitioner's case was referred again to the National Directors as an original jurisdiction case. The ultimate decision of the National Directors was to continue petitioner to the expiration of his sentence. Their statement of reasons reads as follows:



Your offense behavior has been rated as high severity because you committed two separate offenses. You have a salient factor score of 8. You have been in custody a total of 32 months. Guidelines established by the Board for adult cases which consider the above factor indicate a range of 20-26 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, it is found that a decision at this consideration above the guidelines appears warranted because you were the head of an organized gambling operation that involved the bribery of policemen to protect illegal gambling activities..

It is from this decision that petitioner seeks relief. Petitioner contends that he is still being denied parole because of an improper "special offender" classification and cites these indicators: (1) his offense severity was adjusted from moderate to high by reference to a prior conviction whose sentence has run, (2) his salient factor score was affected by reference to the prior conviction, and (3) the prior conviction and the underlying criminal conduct there involved were relied upon as justification for continuing him beyond the guideline period.

Selecting an offense behavior rating of high severity was not an abuse of administrative practice in this case. Petitioner argues that the crime for which he is presently incarcerated, conspiracy to influence a juror, is best analogized to bribery of public officials and should receive a moderate rating in accord with the parole guidelines, see 28 C.F.R. § 2.20. The National Directors explicitly stated that they relied upon both convictions to select the



severity rating. This procedure is sanctioned by parole policy, id. Adult Guidelines n.4, § 2.20(d). In Lupo v. Norton, supra, use of alleged, yet unconvicted, behavior as the basis for the offense behavior severity rating was condoned so long as the prisoner was alerted either during the hearing or by explicit reference in the parole decision. 371 F. Supp. at 162. In this case the two hearings both included inquiry into the prior gambling convictions and the denial made clear reference to the Directors' reliance on both sets of offenses. See also Fisher v. United States, 382 F. Supp. 241 (D. Conn. 1974).

Petitioner's objection to the fact that his salient factor score was affected by the prior convictions is without legal merit. The National Directors properly calculated the salient factor score and in doing so made the required consideration of prior convictions and incarcerations called for in items A and B. Prior convictions are not an unreasonable factor in parole risk prediction.

Petitioner also notes that his prior conviction and the underlying criminal conduct were relied upon to justify continuing petitioner beyond the parole guidelines indicated by his salient factor score and the adjusted severity rating. The National Directors may properly rely on aggravating factors related to the present offense, 28 C.F.R. § 2.19(b)(2), and prisoners' prior criminal activity, id. at § 2.19(c), in reaching a parole decision and justifying a determination to continue incarceration beyond the guidelines. See id. at



§ 2.20(d); Lupo v. Norton, supra.

Here the Directors determined that petitioner had been "the head of an organized gambling operation that involved the bribery of policemen to protect illegal gambling activities." See United States v. Cassino, supra. The reference is explicit and unquestionably informs petitioner of the basis for the decision. Fisher v. United States, supra. Petitioner had been questioned about his role in the gambling venture at two separate institutional hearings.<sup>1/</sup> He has had the opportunity to challenge this allegation by supplementing the record before the Directors' decision, see 28 C.F.R. § 2.21, or on appeal, id. at § 2.27.

In Lupo v. Norton, supra, this Court wrote:

Thus, the regulations specify two distinct ways that an alleged offense can be considered. First, the Board can locate a prisoner on the guideline table by using his alleged offense. Second, the Board can apply the guideline table according to the prisoner's convicted offense and then, even though he has been incarcerated for the time indicated by the guidelines, deny parole because of the aggravated circumstances of the alleged offense.

However, under either approach the Board's regulations requiring a statement of reasons can be satisfied only if the prisoner is told that his alleged offense was the basis for parole denial and how that alleged offense was used.

Id. at 162.

In this case, aspects of the gambling and bribery convictions were used in both regards, first to adjust the offense behavior severity rating, and then to justify incarceration even beyond the augmented guideline period. Such a



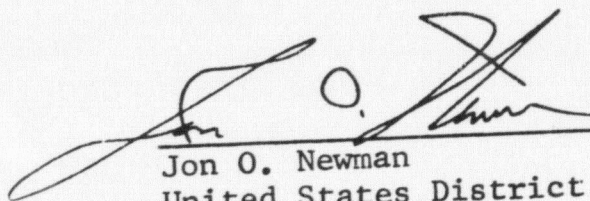
practice could appear to include weighing the prior conviction twice. But here the second reference to the prior conduct focuses not merely upon prior criminal activity but upon what the National Directors characterize as petitioner's central role in that enterprise. Furthermore, the National Directors could have simply justified petitioner's incarceration beyond the guideline by the single reference to his key role in the gambling enterprise without ever having adjusted his offense behavior severity above moderate. In the circumstances of this case, the reliance on petitioner's prior convictions and underlying criminal conduct did not deny any protected right.

The National Directors' statement of reasons demonstrates individual attention to petitioner's case,<sup>2/</sup> and sets forth adequate justification for their decision. The fact that petitioner has been designated original jurisdiction by the Board of Parole does not necessarily indicate that he remains classified a "special offender" by the Board or by the Bureau of Prisons. Petitioner's original claim that he had been unlawfully classified a "special offender" was conceded by the Government before the new parole hearing at Danbury and the subsequent decision of the National Directors. Information relating to petitioner's association with criminal figures need not be disregarded so long as petitioner is alerted to the allegations and given a meaningful opportunity to contest them. The original jurisdiction designation, unlike the "special offender" classification, has not been demonstrated to occasion "grievance loss," since the



substantive standards for parole release remain the same.  
Biancone v. Norton, Civil No. B-74-473 (D. Conn. Nov. 19,  
1975). Accordingly, petitioner's request for relief is  
denied.<sup>3/</sup>

Dated at New Haven, Connecticut, this 7 day of  
March, 1976.

  
Jon O. Newman  
United States District Judge



## FOOTNOTES

1/ In his affidavit, petitioner's counsel represents that while petitioner was asked to comment on his role in the gambling and bribery operation, his offer to produce transcript from petitioner's trial and excerpts from the appellate opinion were short circuited. He also alleges that when questioned about affiliations with organized crime figures, petitioner denied the allegations, but that his request for an opportunity to further rebut the allegations was refused. Unquestionably petitioner was interviewed and his representative offered a statement at the conclusion of the interview in accord with 28 C.F.R. § 2.12(a). Although the hearing examiner must have authority to conduct the proceeding and to "limit or exclude any irrelevant or repetitious statement," *id.*, prisoners should be given adequate opportunity to challenge allegations they believe to be untrue. In this case, the opportunities for petitioner and his counsel to supplement the hearing record by submitting transcript, appellate decision, and other written information to the decisionmakers, the National Directors, and subsequently on appeal make further inquiry into possible infirmities at the hearing unnecessary.

2/ Even the calculation of the amount of time already served was apparently determined independently from the earlier decision.

3/ Petitioner has not contended that the Board's reliance on the seriousness of his offense behavior to continue him beyond the guideline range runs counter to dictum expressed in United States ex rel. Johnson v. Chairman, New York State Board of Parole, 500 F.2d 925, 931 (2d Cir.), vacated as moot sub nom. Regan v. Johnson, 419 U.S. 1015 (1974), in which the Court of Appeals illustrated, as a "questionable" parole policy: "denying parole where, because of the type of offense for which he has been committed, the prisoner has not yet served an 'appropriate period' of incarceration . . . despite the prisoner's readiness for the community . . . ." Wholly apart from the significance of the fact that the judgment in Johnson was vacated as moot, it seems unlikely that the Court of Appeals intended by this illustration to invalidate the Board's guidelines, which were in effect at the time of the Second Circuit's decision. The illustration must be taken as a demonstration of the utility of furnishing reasons for denying parole, rather than as a condemnation of reliance on offense severity as a ground for denying parole. See Battle v. Norton, 365 F. Supp. 925, 931 (D. Conn. 1973).



A 85

JUDGMENT (3/4/76)

✓



A 86

FILED

MAR 4 11 00 AM '76

CLERK  
UNITED STATES DISTRICT COURT U.S. DISTRICT COURT  
BRIDGEPORT, CONN.  
DISTRICT OF CONNECTICUT

NICHOLAS RATTENNI

VS.

CIVIL NO. B-75-321

GEORGE C. WILKINSON, WARDEN,  
FEDERAL CORRECTIONAL INSTITUTION,  
DANBURY, CONNECTICUT, ET AL

J U D G M E N T

This cause came on for consideration on a petition for a Writ of Habeas Corpus and the Court having filed its Memorandum of Decision under date of March 2, 1976, dismissing said petition,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the respondents and the petition for a Writ of Habeas Corpus is dismissed.

Dated at Bridgeport, Connecticut, this 4th day of March, 1976.

SYLVESTER A. MARKOWSKI, Clerk

By Vincent R. DeRosa  
Vincent R. DeRosa  
Deputy in Charge



A 87

PETITIONER'S NOTICE OF APPEAL



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x

Nicholas Rattenni,

Petitioner

-v-

Attorney General of the U.S., U. S.  
Board of Parole, Bureau of Prisons,  
Department of Justice of the U.S.  
George C. Wilkinson, Warden, Fed-  
eral Correctional Institution, Dan-  
bury, Connecticut,

Respondents.

NOTICE OF APPEAL  
Civ. No. B-75-321

-----x

SIRS:

PLEASE TAKE NOTICE that the petitioner NICHOLAS RATTENNI,  
hereby appeals the order of the United States District Court for the District  
of Connecticut, Newman, U.S.D.J., entered March 4, 1976 dismissing,  
without a hearing, a petition for a writ of habeas corpus, to the United  
States Court of Appeals for the Second Circuit.

DATED: March , 1976

Yours, etc.

GINO E. GALLINA  
30 Broad Street  
New York, New York 10004  
(212) 944-1550

cc: Clerks Office  
United States District Court  
915 Lafayette Boulevard  
Bridgeport, Connecticut

United States Attorneys Office  
915 Lafayette Boulevard  
Bridgeport, Connecticut